



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC969

2018 Revision to Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing – Underwater Acoustic Thresholds for Onset of Permanent and Temporary Threshold Shifts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: Per approval of the Secretary of Commerce, The National Marine Fisheries Service (NMFS) announces the availability of the 2018 Revision (NOAA Technical Memorandum NMFS-OPR-59) to its 2016 Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing – Underwater Acoustic Thresholds for Onset of Permanent and Temporary Threshold Shifts (Technical Guidance or Guidance) based on comments received during the review of the Guidance pursuant to section 10 of Presidential Executive Order, Implementing an America-First Offshore Energy Strategy (April 28, 2017).

ADDRESSES: The 2018 Revision to the Technical Guidance (NOAA Technical Memorandum NMFS-OPR-59) is available in electronic form via the Internet at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

FOR FURTHER INFORMATION CONTACT: Amy R. Scholik-Schlomer, Office of Protected Resources, 301-427-8449, *Amy.Scholik@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Presidential Executive Order (EO) 13795, Implementing an America-First Offshore Energy Strategy (82 FR 20815; April 28, 2017), states in section 2 that “It shall be the policy of the United States to encourage energy exploration and production, including on the Outer Continental Shelf, in order to maintain the Nation's position as a global energy leader and foster energy security and resilience for the benefit of the American people, while ensuring that any such activity is safe and environmentally responsible.”

Among the requirements of EO 13795 is section 10, which called for a review of NMFS’ Technical Guidance as follows: “The Secretary of Commerce shall review [NMFS’ Technical Guidance] for consistency with the policy set forth in Section 2 of this order and, after consultation with the appropriate Federal agencies, take all steps permitted by law to rescind or revise that guidance, if appropriate.”

The 2016 Technical Guidance referred to in EO 13795 is a technical document that compiles, interprets, and synthesizes scientific literature to produce updated received levels, or acoustic thresholds, above which individual marine mammals under NMFS’ jurisdiction are predicted to experience changes in their hearing sensitivity (either temporary or permanent) for all underwater human-made sound sources. It is intended for use by NMFS analysts and managers and other relevant user groups and stakeholders, including other Federal agencies, when seeking to determine whether and how their

activities are expected to result in hearing impacts to marine mammals via acoustic exposure. The Technical Guidance helps evaluate a proposed activity within a comprehensive effects analysis. It can inform decisions related to mitigation and monitoring requirements, but it does not mandate any specific mitigation. The Technical Guidance does not address or change NMFS' application of standards in the regulatory context, under applicable statutes, and does not create or confer any rights for or on any person, or operate to bind the public (i.e., the use of the Technical Guidance is not mandatory).

The Office of Management and Budget previously classified the Technical Guidance as a Highly Influential Scientific Assessment (HISA). As such, the document underwent three independent peer reviews, at three different stages its development, including a follow-up to one of the peer reviews, prior to its dissemination by NMFS in 2016. Details of each peer review are included within the Technical Guidance (Appendix C), and specific peer reviewer comments and NMFS' responses are at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>. In addition to three independent peer reviews, there were three public comment periods. The *Federal Register* Notice of Availability for the 2016 Guidance (81 FR 51694; August 4, 2016) summarizes substantive public comments and NMFS' responses.

Review under EO 13795

To assist the Secretary of Commerce in the review of the Technical Guidance for consistency with the policy in section 2 of EO 13795, NMFS solicited public comment

via a 45-day public comment period (82 FR 24950; May 31, 2017). Additionally, on September 25, 2017, NMFS hosted an Interagency Consultation meeting with representatives from the Bureau of Ocean Energy Management (BOEM), Department of State, Federal Highway Administration, Marine Mammal Commission, National Park Service, National Science Foundation, U.S. Air Force, U.S. Army Corps of Engineers, U.S. Geological Survey, and U.S. Navy.

During the public comment period, NMFS received 62 comments from Federal agencies (Bureau of Ocean Energy Management, U.S. Navy, and Marine Mammal Commission), oil and gas industry representatives, Members of Congress, subject matter experts, non-governmental organizations, and members of the public. Most of the comments (85%) recommended no changes to the Technical Guidance. No public commenter suggested rescinding the Technical Guidance. The U.S. Navy, Marine Mammal Commission, Members of Congress, and subject matter experts expressed support for the Technical Guidance's auditory injury thresholds as reflecting the best available science. The remaining comments (15%) focused on additional scientific publications for consideration or recommended revisions to improve implementation of the Technical Guidance.

At the Federal Interagency Consultation meeting, none of the Federal agencies recommended rescinding the Technical Guidance. They expressed support for the Technical Guidance's auditory injury thresholds and the science behind their derivation. Comments received at the meeting focused on improvements to implementation of the Technical Guidance.

During both the public comment period and the Interagency meeting, three key topic areas were raised: (1) the limited scientific data on the impacts of sound on baleen whale hearing; (2) the need to determine accurate sound exposure durations for all species of marine mammals; and (3) the need to improve the Technical Guidance's optional User Spreadsheet tool. Commenters also encouraged the agency to establish working groups to address these data gaps and future needs.

2018 Revisions to Technical Guidance

In response to the feedback received during the public comment period and the Interagency meeting, NMFS has improved the Technical Guidance and updated User Spreadsheet tool in several ways. Since none of the public commenters or Federal agencies offered additional scientific data to modify the auditory injury thresholds, including those for baleen whales, no changes are warranted on that topic at this time. Nevertheless, NMFS plans to convene a working group later in 2018 to continue to examine and refine the auditory injury thresholds for baleen whales as more scientific data become available. Also, since none of the public commenters or Federal agencies offered additional scientific data to modify the sound exposure durations for all species of marine mammals, no specific changes are warranted on that topic at this time either. Nevertheless, NMFS plans to convene a working group later in 2018 to evaluate sound exposure durations to determine whether revisions are appropriate for future updates of the Technical Guidance based on any new information.

To help applicants implement the Technical Guidance and optional User Spreadsheet tool, NMFS has: (a) drafted a new User Manual for the optional User

Spreadsheet that provides more detailed instructions and examples on how to use it and plans to submit this User Manual for public comment later in 2018 to gain input from stakeholders and inform future versions of this manual; (b) modified the optional User Spreadsheet to provide additional capabilities to assess auditory injury thresholds; (c) modified the current optional User Spreadsheet tool to facilitate assessing auditory injury thresholds for commonly used sound source; (d) modified the Technical Guidance to be more reflective of an updated international standard specifically developed for underwater acoustics that became available after the documents finalization in 2016; (e) included a summary and preliminary analysis of relevant scientific literature published since the 2016 Technical Guidance's finalization; and (f) updated the Technical Guidance to include the Navy's finalized version of their 2016 Technical Report that was used to derive the Technical Guidance's auditory injury thresholds.

The 2018 Revision to the Technical Guidance (NOAA Technical Memorandum NMFS-OPR-59) with the updated User Spreadsheet tool and the new companion User Manual is available in electronic form via the Internet at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

Dated: June 18, 2018.

Elaine T. Saiz,

Acting Deputy Director,

Office of Protected Resources,

National Marine Fisheries Service.

[FR Doc. 2018-13313 Filed: 6/20/2018 8:45 am; Publication Date: 6/21/2018]